APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

No. 8215 Civil

MICHAEL BENSON, LINDA HUBBARD, JUNE TRACY and EDDIE BROWN,
Plaintiffs,

vs.

THE INTER-TRIBAL INDIAN CEREMONIAL ASSOCIATION, EDWARD S. (IKE) MERRY, JACK JOHNSON, CHRIS DIGREGORIO and RICHARD KAUZLARIC,
Defendants.

Judgment of Dismissal

The above entitled matter having come on regularly for hearing before the Court, sitting without a jury, and at the conclusion of said trial the Court took said matter under advisement, and having considered the evidence, the exhibits, the pleadings, the memorandum submitted by plaintiffs and the authorities submitted by the defendants, and having prepared and filed herein its Finding of Fact and Conclusions of Law finding generally for the defendants and against the plaintiffs, now, therefore, it is

ORDERED that the complaint, together with the cause, be, and the same is hereby dismissed.

IT IS FURTHER ORDERED that defendants have their cost herein expended, to be taxed by the Clerk.

Dated this 7th day of August, 1970.

Ewing T. Kerr
Judge, United States District Court,
Assigned

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

No. 8215 Civil

MICHAEL BENSON, LINDA HUBBARD, JUNE TRACY and EDDIE BROWN,
Plaintiffs,

vs.

THE INTER-TRIBAL INDIAN CEREMONIAL ASSOCIATION, EDWARD S. (IKE) MERRY, JACK JOHNSON, CHRIS DiGREGORIO and RICHARD KAUZLARIC,
Defendants.

Findings of Fact and Conclusions of Law

The above entitled matter having come on regularly for hearing before the Court, sitting without a jury, the plaintiffs appearing by and through their counsel, Theodore R. Mitchell and Robert C. Hanna, and the defendant the Inter-Tribal Indian Ceremonial Association, Edward S. (Ike) Merry, Chris DiGregorio and Richard Kauzlaric appearing by and through their counsel Harl D. Byrd of the firm of Bigbee & Byrd, and the defendant Jack Johnson appearing by and through his counsel Robert G. McCorkle of the firm of Rodey, Dickason, Sloan, Akin & Robb and Miss Joyce Blalock, Assistant Attorney General for the State of New Mexico, and the Court having heard the testimony offered for and on behalf of the plaintiffs and the evidence adduced for and on behalf of the defendants, took said matter under advisement. The Court now having considered the pleadings, the testimony and exhibits, together with the memorandum submitted by plaintiffs and the authorities submitted by the defendants, and being fully advised in the premises, makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. That the Inter-Tribal Indian Ceremonial Association is and has been a nonprofit corporation organized under and by virtue of the laws of the State of New Mexico and is hereinafter referred to as "Association".

2. In 1939 the Association was designated by the State of New Mexico pursuant to Section 73-31-1, New Mexico Statutes Annotated, 1953 Compilation, as amended, and is an official agency of the State of New Mexico for the purpose of encouraging the preservation and development of Indian Arts and Crafts among Indian tribes and pueblos of the State of New Mexico; encouraging the preservation of traditional rites and ceremonials of the Indian tribes and pueblos; and for the development of knowledge and appreciation of Indian arts, crafts, rites and ceremonials among other people.

3. The Association owns real property with the improvements thereon, commonly called Lyon Memorial Park located in McKinley County, New Mexico, near the city of Gallup, State of New Mexico.

4. The Articles of Incorporation which were in effect at the time this controversy arose are as follows:

"(a) The provision of facilities for the operation and conduct of the Inter-Tribal Indian Ceremonial; the exhibition of agricultural and husbandry products produced by the American Indians; display and exhibition of Indian blankets, pottery, baskets, silverware, jewelry, furniture and other articles made by Indians; the exhibition of all handwork, writings, paintings, etc., of Indian school children; in fact the exhibition of any product made, produced or raised by the American Indian which will further their education or the education of others interested.

(b) For provision of facilities for the various Indian Tribes to exhibit or perform their various tribal or individual dances, religious ceremonies, songs and sports or any other performance or exhibition that may tend to educate the Indians themselves or others interested in Indian Folklore, history or religion".

5. The By-Laws of the Association which were in effect at all material times hereto provide in part that:

"1. The management of this Association shall vest in a BOARD OF DIRECTORS consisting of Twelve (12) members.

3. Memberships in this Association may be held by any person, firm or corporation and shall not be listed in the number held by any such person, firm or corporation. The membership fee shall be Ten ($10.00) Dollars and shall be paid at the time of making application for membership. A membership in this Association shall be for One (1) year only, but may be renewed from year to year upon the payment of the membership fee.

6. Each membership shall entitle the holder thereof to One (1) vote at all meetings of the Association.

9. The Financial Support of this Association shall be derived from Membership Fees, Gifts, Donations and monies received from the exhibits at the Ceremonial. The monies so received by this Association shall be used only for the following purposes:

(a) The provision of facilities for the operation and conduct of the Inter-Tribal Indian Ceremonial; the exhibition of Agricultural and Husbandry products produced by the American Indians; display and exhibition of Indian blankets, pottery, baskets, silverware, jewelry, furniture and other articles made by Indians; the exhibition of all handwork, writings,

paintings, etc., of Indian school children; in fact, the exhibition of any product made, produced or raised by the American Indian which will further their education or the education of others interested.

(b) For provision of facilities for the various Indian Tribes to exhibit or perform their various tribal or individual dances, religious ceremonies, songs and sports or any other performances or exhibitions that may tend to educate the Indians themselves or others interested in Indian folklore, history or religion".

6. That defendant Richard Kauzlaric, was President of the Association, defendant Edward S. Merry was employed by the Association as Executive Director, and defendant Chris DiGregorio was employed as Grandstand Supervisor.

7. That the defendant Jack Johnson was acting in the course and scope of his employment and duties as a New Mexico State Police Officer and was on assignment at the Inter-Tribal Indian Ceremonial at Gallup, New Mexico.

8. At no time herein, did the Association, Kauzlaric, DiGregorio or Merry ever have any direct or indirect contact with any of the plaintiffs Brown, Hubbard or Tracy.

9. That at no time herein did the defendant Merry ever have any direct or indirect contact with any of the plaintiffs, Benson, Brown, Hubbard or Tracy.

10. The 1969 Association ceremonial was held on August 14th through 17th, 1969, on its property described in Finding of Fact number 3. There were afternoon and evening performances presented to persons occupying a grandstand and bleachers. The Association grounds are fenced and automobiles entering the grounds are charged a parking fee while pedestrians are admitted to the Asso-

ciation grounds without charge and also charges are made for admission to the grandstand and bleachers for the performances.

11. That the main entrance and exit of the grandstand is located in the center of the structure which exits into a restricted area called the concourse and in which concourse area there are several refreshment stands. The concourse area, prior to, during intermissions and after the various performances, is a highly congested area with persons entering and leaving the grandstand, purchasing refreshments, which area is kept free from obstructions so that an orderly flow of persons may be maintained. During performances there are still many hundreds of people in the concourse area with thousands of others on the ceremonial grounds viewing the exhibits or in the process of coming from and going to the various activities held on the ceremonial grounds.

12. During the ceremonial most ceremonial officials and employees wear bright colored velveteen shirts and pants and defendants Kauzlaric and DiGregorio were wearing the same during these performances.

13. The grandstand and bleachers were substantially occupied by spectators during the evening performance of Friday, August 15, 1969.

14. That during the evening of August 15, 1969, a lady showed plaintiffs' Exhibit No. 1 to Kauzlaric and asked him where she could obtain another copy, which was the first knowledge Kauzlaric had of plaintiffs' Exhibit No. 1.

15. That at approximately 10:00 P.M. on Friday, defendant Johnson observed plaintiff Michael Benson handing out leaflets Plaintiffs' Exhibit No. 1, while Benson was standing very near the exit aisle of the main entrance of the grandstand on the Ceremonial grounds during inter-

mission and observed that Benson, in such a position, was obstructing the orderly flow of the pedestrian traffic. Johnson approached Benson and was handed a leaflet and then stepped back away from the flow of traffic, and moved several feet from Benson and read the first two or three paragraphs of the leaflet.

16. That at the August 15, 1969, evening performance, at or about 10:00 o'clock P.M., DiGregorio, grandstand supervisor, observed Benson standing in or near the exit aisle of the main entrance of the grandstand in such a manner that he was blocking or disturbing the orderly flow of the spectators exiting from the grandstand while passing out copies of plaintiffs' Exhibit "1" into the arms of spectators passing by him DiGregorio approached Benson and asked him what he was doing and Benson replied to the effect it was none of DiGregorio's business whereupon DiGregorio reached for a leaflet and whereupon Benson lowered the leaflets he was holding and gave all of them to DiGregorio and moved away from the exit.

17. That shortly after Benson gave his leaflets to DiGregorio, Kauzlaric approached Benson, introduced himself and asked Benson for his name, to which request Benson refused stating Kauzlaric was not a police officer, but Benson intimated he would give his name to a police officer, whereupon Kauzlaric and Benson walked over to where defendant Johnson was standing, at which time defendant Kauzlaric introduced himself to defendant Johnson, stating that he was President of the Ceremonial Association and that Benson had refused to identify himself to Kauzlaric as Kauzlaric was not a police officer. Kauzlaric asked Johnson to obtain Benson's name.

18. That defendant Johnson introduced himself to Benson and asked Benson for identification. Benson did not object to identifying himself to Johnson and gave him

[sic] name and address to him. He asked Johnson if it was necessary to give the information Kauzlaric.

19. That Johnson stated that in his opinion the information was public record and that he felt Kauzlaric could obtain the information by asking for it and Johnson then repeated Benson's name and address to Kauzlaric. That Kauzlaric was standing close enough to Benson and Johnson to hear the conversation between them.

20. That during the aforesaid discussion on Friday evening of August 15, 1969, Kauzlaric gave Benson Kauzlaric's business card and stated that if Benson had anything he would like to discuss about the Ceremonial or any other problem that Kauzlaric would like to discuss it with Benson at that time or any other time Benson might desire and it was agreed between Benson and Kauzlaric that Benson would not further distribute the leaflets on the ceremonial grounds.

21. That after the aforesaid discussion, Benson met or was joined by a group of young people who all engaged in a discussion about the leaflet. Benson told the group "That cop took away my leaflets". One of the persons in the group stated that if Benson wanted, the group would tear apart or burn the Ceremonial facility down. Officer Johnson observed this discussion and heard these statements.

22. That Benson departed from the group and ran to the parking lot where he got in Brown's car. As the car started to move from its parking place, Officer Johnson walked by and Michael Benson bent over or crouched down in the car in an attempt to hide from Johnson. Johnson saw Benson trying to hide and stopped the car.

23. That Johnson asked Brown for his driver's license and for the registration papers on the car. After

Brown produced these items the three engaged in a discussion which lasted between five to fifteen minutes. Johnson did not threaten either Benson or Brown with arrest and did not tell them that they had to leave the Ceremonial grounds and believed that Benson had agreed not to further distribute the leaflets on the Ceremonial grounds. Johnson was courteous with the plaintiffs and they were courteous towards Johnson. The conversation included social matters, including the attendance of Mr. Brown and defendant Johnson's daughter at Eastern New Mexico University. The conversation ended on a friendly note and Officer Johnson shook hands with both plaintiffs.

24. That Johnson was specifically authorized by N.M.S.A. §65-3-11 (1953 Comp.) and N.M.S.A. §64-13-49 (1953 Comp.) to obtain Brown's driver's license and automobile registration.

25. That Johnson did not see Brown at any place on the Ceremonial grounds until the conversation which occurred in Brown's car at the parking lot.

26. That the plaintiffs then departed from the Ceremonial grounds.

27. That later that evening Johnson met his grounds supervisor, Sergeant Shockey, and told Shockey that plaintiffs had agreed not to distribute the leaflets on the Ceremonial grounds.

28. That during the forenoon of August 16, 1969, Johnson told Kauzlaric about overhearing the remark about tearing or burning the place down on Friday evening and Benson's rushing off the grounds.

29. That at approximately 12:30 on the following day, Saturday, August 16, 1969, the plaintiffs Benson, Tracy

and Hubbard came to the Ceremonial grounds and started handing out copies of the leaflets.

30. That Kauzlaric, after again observing Benson passing out leaflets on August 16, 1969, discussed with the Assistant District Attorney and District Attorney for McKinley County, who were on the Ceremonial grounds, the contents of the leaflet; the impact the leaflet could have upon the thousands of people, including many of Indian descent, arriving for the afternoon performance; the disturbances at the main entrance to the grandstand by Benson on Friday evening; the remark about tearing or burning the place down as told to Kauzlaric by Johnson; and told the District Attorney and the Assistant District Attorney about his concern that the continued handing out of the leaflet on the Ceremonial grounds might cause a substantial disruption or material interference with the ceremonial activities and sought their advice in their official capacities as District Attorney and Assistant District Attorney for McKinley County, New Mexico, as to what could be done about preventing possible disturbances or disorders.

31. That the Assistant District Attorney interpreted the contents of the leaflet to amount to a call to arms and under the circumstances and the impact which the leaflet could have upon the thousands of people, including many of Indian descent, arriving for the afternoon performance on August 16, 1969, and the events of August 15, 1969, the Assistant District Attorney believed that a substantial disruptive material interference could develop and lead to a riot situation and upon being informed by the District Attorney that the Ceremonial grounds were private property advised Kauzlaric that he, as President of the Association, could withdraw Benson's permission to be on the Ceremonial grounds if he continued to pass out the leaflets and if Benson continued to do so then a criminal complaint could be made by the Association and Benson could be

arrested for criminal trespass. Based upon this advice Kauzlaric informed Johnson that Kauzlaric, as President of the Association, was denying Benson's permission to be on the grounds if he continued to pass out the leaflets.

32. That Johnson stated he must check with his supervisors, contacted his supervisors, Captain Cordova, and received instructions from Cordova to check with the District Attorney and follow his advice.

33. That Johnson located Assistant District Attorney Joseph Rich. Rich told Johnson that Kauzlaric, as President of the Ceremonial Association, had authority to and had withdrawn the consent of the Ceremonial Association for the plaintiff Benson to remain on the Ceremonial grounds handing out the leaflets.

34. That Johnson located Benson and stated that he had been instructed by the District Attorney to tell him to stop handing out the leaflets and that the District Attorney had stated that Benson could be arrested if he continued to hand out the leaflets on the grounds.

35. That Benson asked for an opportunity to discuss the matter with the District Attorney. Johnson took Benson and introduced Rich to Benson as the District Attorney and stated that Benson would like to know what his situation was. Rich advised Benson that the Ceremonial grounds was private property, that permission for him to remain on the premises had been withdrawn, and that if Benson did not stop distributing the leaflets on the premises a criminal complaint in trespass could be filed against him. Benson, following these statements, made no oral reply but manifested his agreement that he would stop passing out leaflets on the Ceremonial grounds.

36. That Rich told Benson he could distribute the leaflets off of the Ceremonial grounds. Johnson asked

Benson if he had any questions or if he understood the situation to which Benson made no reply. Benson and Johnson left the room and Benson joined the plaintiffs Tracy and Hubbard, who were on the Ceremonial grounds handing out leaflets.

37. That Benson told Tracy and Hubbard what the District Attorney had told him and Benson told Tracy and Hubbard that they should leave the grounds to distribute their leaflets.

38. That Officer Johnson told Benson, Tracy and Hubbard they were welcome to remain on the grounds if they would not hand out leaflets or that they could hand out the leaflets outside the grounds to people coming onto the grounds.

39. That Johnson said Benson could inform other persons handing out the leaflets on the grounds of the position taken by the District Attorney and that no one would be arrested until they had been warned to stop handing out the leaflets on the grounds and an opportunity afforded to discuss the matter with the District Attorney if they so desired.

40. That Miss Hubbard was joined by a friend, Kathy Marmon, and started to hand Miss Marmon a leaflet when Officer Johnson lowered his arm to prevent her from handing Miss Marmon the leaflet. Officer Johnson stated "Let's go" and followed behind Tracy, Hubbard, Benson and Marmon at a distance of approximately fifteen feet as they exited from the Ceremonial grounds. Johnson kept a sufficient distance between himself and the plaintiffs so that it would not appear to anyone who saw the plaintiffs leaving the grounds that they were being escorted by a police officer.

41. Officer Johnson's primary responsibility on Saturday afternoon was to guard the funds in the ticket office near the front of the grandstand. Officer Johnson followed the plaintiffs from the Ceremonial grounds to make sure that they left the grounds with the leaflets to avoid his having to try to keep a continual lookout to make sure that they were not handing out the leaflets on the grounds.

42. The defendant Johnson's action on August 16, 1969, was in accordance with Johnson's good faith understanding of his instructions from his supervisor and the District Attorney.

43. That Johnson did not touch any plaintiff at any time material herein other than on two or three occasions when he shook hands with Michael Benson or Eddie Brown nor did Kauzlaric or DiGregorio ever touch any of the plaintiffs at any time material herein.

44. That Officer Johnson was friendly and courteous to the plaintiffs at all times and did not use any abusive language in the presence of the plaintiffs. That all of the plaintiffs were courteous and polite to Officer Johnson and treated him with respect; however, all of the plaintiffs were afraid of Officer Johnson because he was a police officer and not because of anything that he did on Friday the 15th or Saturday the 16th.

45. That Kauzlaric and DiGregorio were friendly and courteous to Benson.

46. That defendant Johnson's conduct in executing what he understood to be the instructions of the District Attorney was reasonable.

47. That defendant Johnson did not arrest the plaintiffs, or any of them, at any time.

48. That defendants, or any of them, did not willfully, knowingly, or purposely deprive plaintiffs or any of them, of any right or privilege secured to them by the Constitution of the United States, or of any right or privilege whatsoever.

49. That the Association through Kauzlaric acting as President of the Association acted under and in reliance upon the advice and counsel of the Assistant District Attorney Rich in Rich's capacity as Assistant District Attorney in withdrawing the Association's permission for Benson to be on the ceremonial grounds and that said acts were done in good faith.

50. That under the facts and circumstances as hereinabove set forth, all of the defendants acted in good faith.

51. That at no time herein did the defendants or any of them threaten or harass the plaintiffs or any of them.

52. That at no time during August 15th or 16th, 1969, and subsequent thereto, did the defendants or any of them act in disregard of or in disdain for plaintiffs' constitutional rights secured to them by the Constitution of the United States or laws thereof by improperly releasing, obtaining, inspiring or encouraging newspaper publicity as a campaign against plaintiffs because of plaintiffs' acts or conduct on or off the Ceremonial grounds on said dates.

53. That the defendants, or any of them, did not individually or otherwise willfully, knowingly, purposely or in concert with others or otherwise, deprive plaintiffs, or any of them, of any rights, privileges or immunities secured to them by the Constitution of the United States or of any right or privilege whatsoever.

54. That there is no evidence of a conspiracy.

55. That each of plaintiffs' claims for monetary damages are conjectural, insubstantial and totally speculative.

56. That the Ceremonial grounds or property owned by the Association is not a public park maintained by the State of New Mexico or any subdivision thereof for the convenience, use, and recreation of the residents of Gallup and the general public, nor held out to be the same.

57. That the Ceremonial grounds is not a public street, way or park dedicated to public use and is not a place open to any person to be used as a public forum.

58. That the purposes to which plaintiffs attempted to use the Ceremonial grounds were inconsistent and contrary to the purposes and uses for which the Ceremonial grounds were dedicated to be used and was not the only place where plaintiffs could have transmitted their message.

59. That plaintiffs, during August 15th and 16th, 1969, passed out the leaflets outside the Ceremonial grounds at the entrances thereto and on the city streets of Gallup without any intervention by any persons.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the parties and over the subject matter of the plaintiffs' Amended Complaint.

2. That at all times herein defendant Jack Johnson was acting under color of law in the course and scope of his employment as a New Mexico State Police Officer.

3. That defendant Jack Johnson was specifically authorized by N.M.S.A. §64-3-11, 1953 Comp., and N.M.S.A. §64-13-49, 1953 Comp., to obtain plaintiff Brown's driver's license and automobile registration on Friday, August 15, 1969.

4. After hearing a comment about burning the Ceremonial Association down and having seen Michael Benson run from the Ceremonial grounds and attempt to hide from Officer Johnson, these acts constituted an appropriate circumstance for Officer Johnson to approach Benson and Brown to investigate possible criminal behavior, and Officer Johnson's conduct in stopping the car and requesting identification was, therefore, reasonable conduct by the police officer and was not a violation of any civil right or privilege and immunity guaranteed to the plaintiffs by the Constitution or any statute of the United States.

5. That none of the plaintiffs objected to identifying themselves to Officer Johnson. Johnson's obtaining their identification did not constitute a violation of any civil right or any privilege or immunity guaranteed to plaintiffs by the Constitution of the United States or by any statute of the United States.

6. That defendant Johnson did not detain plaintiffs Benson or Brown for any unreasonable length of time and any detention for a conversation between the three was consented to by Brown and Benson and as a result of such discussion on August 15, 1969, Johnson did not violate any privilege or immunity guaranteed to plaintiff Benson by the Constitution of the United States or by any statute of the United States.

7. That Officer Johnson acted reasonably under all the circumstances on Friday night, August 15, 1969, and his conduct did not constitute a violation of any privilege or immunity guaranteed to plaintiffs Benson or Brown by the Constitution of the United States or by any statute of the United States.

8. Officer Johnson did not arrest plaintiff Benson or Brown on August 15, 1969, or at any other time.

9. In the event that probable cause should have been necessary for the conduct of Officer Johnson on Friday, August 15 1969, such probable cause existed in his reading of the leaflet, hearing the comment about burning the Ceremonial facility down, observing Benson run from the group, and seeing Benson's attempt to hide from defendant Johnson in plaintiff Brown's car.

10. That defendant Johnson's actions were done in reasonable and good faith performance of his lawful duties as he understood them as a State Police Officer of the State of New Mexico, and, therefore, defendant Johnson is not liable to the plaintiffs for any violation of any privilege or immunity guaranteed to plaintiffs by the Constitution of the United States or by any statute of the United States.

11. That defendant Johnson was at all times on Saturday, August 16, 1969, acting for or at the express and implied directions of the Assistant District Attorney, a quasi-judicial officer, and with the express and implied direction and orders of his supervisor at the New Mexico State Police, and defendant Johnson is, therefore, immune for any violation of any privilege or immunity guaranteed to plaintiffs by the Constitution of the United States or by any statute of the United States.

12. That after defendant Association through Kauzlaric, as President of the Ceremonial grounds, being the lawful custodian of the grounds, revoked the Association's permission for Benson to remain on the grounds handing out the leaflets, his continued presence on the grounds handing out the leaflets would have constituted criminal trespass under the laws of the State of New Mexico and Benson could have been prosecuted for criminal trespass.

13. That after defendant Association through Kauzlaric, as President of the Ceremonial grounds, being the

lawful custodian of the grounds, revoked his permission for Benson to remain on the grounds handing out the leaflets his continued presence on the grounds handing out the leaflets would have constituted the misdemeanor of wrongful use of public property and it was the duty of defendant Johnson to attempt to prevent the commission of the misdemeanor which could have resulted in a breach of the peace.

14. That it was the duty of defendant Johnson to execute the express or implied direction of the District Attorney to make sure that the leaflet was not distributed on the Ceremonial grounds on Saturday, August 16, 1969.

15. That if there was any violation of any right, privilege, or immunity secured to Benson by the Constitution or statutes of the United States, then such rights would have been violated by the decision made by the District Attorney, to-wit, that the defendant Kauzlaric had authority to withdraw his consent for Benson to remain on the grounds and hand out leaflets, and that the acts of Officer Johnson in determining that such legal decision was complied with were done in reasonable and good-faith performance of his lawful duties as a State Police Officer, and defendant Jack Johnson is not liable to Benson or the other plaintiffs for any violation of any privilege or immunity guaranteed to plaintiffs by the Constitution of the United States or by any statute of the United States.

16. That if there was any violation of any right, privilege, or immunity secured to Benson by the Constitution or statutes of the United States, then such rights would have been violated by the legal decision made by the District Attorney, to-wit, that the defendant Kauzlaric had authority to withdraw his consent for Benson to remain on the grounds and hand out leaflets, and the acts of de-

fendant Johnson were the result of an honest misunderstanding of his legal duties or an honest mistake of law and fact without realizing that his conduct might result in depriving Benson or the other plaintiffs of any rights or privileges secured to them by the Constitution or statutes of the United States and defendant Jack Johnson is not liable to the plaintiffs.

17. That defendant Johnson did not arrest any of the plaintiffs and, therefore, probable cause is not an element to consider.

18. That none of the plaintiffs were threatened, harassed or intimidated by the defendants, or any of them.

19. That Kauzlaric and DiGregorio did not know nor were they required to know that their actions could conceivably be construed by Benson as depriving Benson of his constitutional rights.

20. That none of the plaintiffs were removed from the Ceremonial grounds by or at the request of the Association, Kauzlaric, DiGregorio or Merry, nor were plaintiffs otherwise threatened or intimidated by the Association, Kauzlaric, DiGregorio or Merry.

21. That the defendants at all times hereto acted lawfully, reasonably and with the good faith belief that their actions were required in order to protect against violation of the public peace and order, and in order to preserve the Ceremonial Association's property.

22. That the Ceremonial grounds is not a public street, way or park dedicated to public use and is not a place open to any person to be used as a public forum.

23. That the purposes to which plaintiffs attempted to use the Ceremonial grounds were inconsistent and contrary to the purposes and uses for which the Ceremonial

grounds are dedicated to be used and plaintiffs did and could have transmitted their message at other places other than the Ceremonial grounds.

24. That the leaflet, and the conduct of the plaintiffs in connection therewith, was calculated to produce disturbance or interference with those in attendance at the Ceremonial.

25. That with thousands of spectators and Indians present and with due regard to the time and manner in which the leaflets were being distributed, and the impact upon those persons attending the Ceremonial activities, including those of Indian descent, the incidents that occurred prior, during and after the August 15, 1969, incident with Benson, Kauzlarie had reason to anticipate that the continued handing out of the leaflets would cause a substantial disruption or material interference with the Association's activities and, with due regard to the obligation of the Association to provide a safe place for the viewing of the Ceremonial, his conduct as President of the Association was required and said conduct and acts were reasonable, performed in good faith and in reliance upon the advice of the Assistant District Attorney.

26 That defendant Association, through its representatives, has the power to preserve the Ceremonial property for the use and purposes for which it was lawfully dedicated. The plaintiffs' acts, conduct, purposes and use of the Association's property was completely contrary to the uses and purposes for which the Association's property was lawfully dedicated by the State of New Mexico and the Association. Plaintiffs' right to use the Ceremonial grounds is a qualified right or privilege and subject to reasonable regulation by officials of the Ceremonial Association and clearly subject to revocation with due regard to the facts and circumstances here involved.

27. That the Association is an agency of the State of New Mexico and is not a person within the contemplation of applicable Federal and Civil Rights statutes, and this action is a suit against a sovereign which has not consented to be sued and the defendants Kauzlaric, DiGregorio and Merry are sued in their official capacities, and this action as to all defendants should be dismissed.

28. No monetary or other damages can be found against the Association.

29. There is no evidence that the Association, Kauzlaric, DiGregorio or Merry acted under color of state law, statute, ordinance or custom to deprive the plaintiffs, or any of them, of their rights, privileges or immunities secured to them by the Constitution of the United States or any statute thereof.

30. Plaintiffs' claims for relief fail to state a claim upon which relief can be granted against any of the defendants, Association, Kauzlaric, DiGregorio, Merry or Johnson.

31. The acts and conduct of the plaintiffs at the times and under the circumstances as they existed, were performed in such manner that they were not constitutionally protected and the acts of the defendants Association, Kauzlaric, DiGregorio and Johnson under such circumstances did not deprive plaintiffs of their constitutionally protected or other civil rights and privileges.

32. That the defendants Merry and DiGregorio did not violate any rights, privileges or immunities secured to plaintiffs Brown, Hubbard or Tracy by the Constitution of the United States or any statute of the United States.

33. That the defendant Merry did not violate any rights, privileges or immunities secured to the plaintiffs

by the Constitution of the United States or any statute of the United States.

34. That if plaintiffs were engaged in constitutionally protected activities or they were deprived of their civil rights, the actions of defendants Association, Kauzlaric, DiGregorio and Johnson were done reasonably and in good faith in the performance of their duties as they understood them in reliance upon the advice of the Assistant District Attorney without any intent whatsoever to deprive plaintiffs of any constitutional rights or other civil rights and privileges, and without the realization that their conduct might result in depriving plaintiffs of such rights and were, therefore, privileged.

35. That there is no actual justiciable controversy here involved.

36. That none of the plaintiffs suffered any compensatory damages as a direct or indirect result of any act or omission of defendants Association, Kauzlaric, DiGregorio, Merry or Johnson.

37. That any damages which plaintiffs may have suffered are conjectural, speculative and insubstantial.

38. That plaintiffs are not entitled to receive punitive damages from any of the defendants.

39. Insofar as injunctive relief is requested, the plaintiffs have not suffered irreparable injury and have a plain, adequate and speedy remedy at law.

40. That on August 15th and 16th, 1969, the acts and conduct of defendants were not a violation of any rights, privileges or immunities secured to plaintiffs Benson, Brown, Hubbard or Tracy by the Constitution of the United States or any statute of the United States.

41. That the plaintiffs at all times were given the same right to and the full and equal benefit of all laws and proceedings for the security of their person and property as are enjoyed by white citizens.

42. That there was no conspiracy among the defendants to deprive plaintiffs, or any of them, either directly or indirectly, nor were any overt acts done by plaintiffs pursuant to a conspiracy to deny plaintiffs of any rights, privileges or immunities under the Constitution and laws of the United States, or the equal protection of the laws or of equal privileges and immunities under the laws of the United States or the State of New Mexico.

43. That the defendants have not violated any of the plaintiffs' rights under 42 U.S.C., Sections 1981, 1983, 1985 (3).

44. That the defendants are not liable to the plaintiffs and judgment will be entered dismissing the complaint, together with the cause.

Dated this 7th day of August, 1970.

Ewing T. Kerr
Judge, United States District Court,
assigned.